

1 Mariam S. Marshall, Esq. (Bar No. 157242)
Zunilda Ramos, Esq. (Bar No. 161114)
2 MARSHALL & RAMOS, LLP
ATTORNEYS AT LAW
3 Two Worlds Center
91 Gregory Lane, Suite 7
4 Pleasant Hill, California 94523
Telephone: (925) 446-4546
5 Facsimile: (925) 446-4549
mmarshall@marshallramoslaw.com

6
7 Attorneys for Trustee
FRED HJELMESET

8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10
11 In re: Case No. 18-52831 MEH
12 FATMATA JOHN, Chapter 7
13 Debtor. **No Hearing Required**

14
15 **TRUSTEE'S APPLICATION FOR ORDER APPROVING**
16 **SALE OF REAL PROPERTY OF THE ESTATE FREE AND CLEAR OF LIENS AND**
ENCUMBRANCES PURSUANT TO 11 U.S.C. SECTION 363(b) and (f)

17 TO THE HONORABLE M. ELAINE HAMMOND, UNITED STATES BANKRUPTCY
18 JUDGE:

19 Applicant FRED HJELMESET aka FRODE HJELMESET, trustee of the above-
20 referenced Chapter 7 bankruptcy estate (the "Trustee"), hereby requests entry of an
21 order approving: (1) the Trustee's short sale of real property of the estate known as,
22 3354 Caselegno Court, San Jose, California 95148, Assessor's Parcel No. 659-67-066,
23 consisting of a single family residence (the "San Jose Property"), to Xingping He and
24 Weiging Wei (the "Buyers"), for the sum of \$1,755,000, free and clear of liens,
25 encumbrances and interests pursuant to 11 U.S.C. Section 363(b) and (f), as set forth
26 below.

27 As set forth below, this is a **short sale** of the San Jose Property. The Trustee has
28

1 received an offer from the Buyers to purchase the San Jose Property free and clear of
2 liens, encumbrances and interests for the total consideration of \$1,755,000. All other
3 monetary obligations of the Trustee, as seller of the San Jose Property, that would
4 normally be paid at the close of escrow, such as real property taxes, broker sales
5 commissions, escrow fees and other costs of sale, shall be paid through escrow from
6 the sale proceeds of the San Jose Property. The estate shall receive a "carve out" of
7 \$100,000. The remaining net sale proceeds shall be paid to the first deed of trust holder,
8 the second deed of trust holder and the judgment lien holder, as set forth in below. This
9 is a true short sale as the total consideration is less than the total amount owed to the
10 lien holders.

11 The Trustee accepted the Buyers' offer of \$1,755,000, which is the highest and
12 best offer received by the Trustee. The Trustee believes that a further bidding deadline
13 on the San Jose Property will provide no additional benefit to the estate as the highest
14 bid has already been received after exposing the San Jose Property to the market for a
15 number of months. Moreover, with the secured lenders' payoff increasing every month,
16 the Trustee believes that the sale must not be delayed by further deadlines and the San
17 Jose Property must be sold as soon as possible in order to maximize the benefit to the
18 estate.

19 The Trustee understands that, in order to complete the short sale process, the
20 creditors holding the first and second priority liens on the San Jose Property, Nationstar
21 Mortgage LLC, d/b/a Mr. Cooper (hereinafter "Mr. Cooper") and Real Time Resolutions,
22 Inc. ("RTR"), must consent. The Trustee has procured Mr. Cooper and RTR's consent
23 to sell the San Jose Property, as short sale, subject to Bankruptcy Court approval.
24 Additionally, the Trustee has negotiated a discounted payoff of JP Morgan Chase
25 Bank's, third position judgment lien against the San Jose Property in the amount of
26 \$1,000 (the "Judgment"). Mr. Cooper's first position deed of trust, RTR's second position
27 deed of trust, and the Judgment will be paid at the reduced amount agreed to agreed by
28

1 the parties, in full satisfaction of their liens and interests. All approved costs shall be paid
2 through escrow and the estate will receive the benefit of the \$100,000 carve-out at
3 closing.

4 The Trustee proposes to sell the San Jose Property free and clear of liens under
5 11 U.S.C. Section 363(b) and (f). If this motion is not approved, any and all benefit to the
6 estate will be completely lost, as it is likely that Mr. Cooper will foreclose on the San
7 Jose Property on account of its underwater status and the delinquent obligations. As
8 discussed below, the Trustee believes that good cause exists to grant this sale motion to
9 allow the estate to benefit from this favorable business opportunity.

10 **I. RELEVANT FACTS**

11 Fatmata John (the "Debtor"), filed a voluntary Chapter 13 case on December 26,
12 2018, which was converted to a Chapter 7 case on February 8, 2019. The Trustee is the
13 duly appointed and acting trustee of the Debtor's Chapter 7 bankruptcy estate. The
14 Debtor and her husband Biamba John, are the legal and equitable owners of the San
15 Jose Property and hold title to the San Jose Property as community property with right of
16 survivorship. A true and correct copy of the title report for the San Jose Property, dated
17 March 26, 2019, confirming community property status of property is attached as
18 **Exhibit "A"** to the Declaration of Fred Hjelmeset, submitted herewith.

19 Pursuant to 11 U.S.C. Section 541(a)(2), all property held in community property,
20 including the San Jose Property, became property of the within bankruptcy estate, upon
21 the commencement of the Debtor's bankruptcy case.

22 In her bankruptcy schedules the Debtor did not assert an exemption in the San
23 Jose Property. The Debtor further stated in her schedules that the San Jose Property
24 had a value of \$1,800,000, and was subject to two deeds of trust, i.e., a first deed of
25 trust in favor of Nationstar Mortgage aka Mr. Cooper in the outstanding sum of
26 \$1,600,000.00 and a second deed of trust in favor of Real Time Resolutions, Inc.
27 ("RTR"), in the sum of \$437,000. See, Debtor's Bankruptcy Schedules A, C, and D filed
28

1 on January 23, 2019, collectively attached as **Exhibit “B”** to the Hjelmeset Declaration.

2 Consequently, in the absence of a Court approved short-sale, based on the
3 Debtor’s schedules, there would be insufficient equity in the San Jose Property to pay
4 any liens recorded against the property other than Mr. Cooper’s first deed of trust.

5 On April 15, 2019, the Trustee procured an order authorizing the employment of
6 BK Global to assist the Trustee in negotiating a short sale of the San Jose Property.
7 (“BK Global”). Additionally, on April 17, 2019, the Trustee procured an order authorizing
8 the employment of Andy Buchanan and Intero Real Estate Services as the Trustee’s
9 real estate broker to market and sell the San Jose Property (collectively “Buchanan”).
10 The combined compensation of BK Global and Buchanan is six percent (6%) of the total
11 sale price of the San Jose Property (the “Commission”). Buchanan has procured the
12 Buyers who have offered to purchase the San Jose Property for the sum of \$1,755,000,
13 as set forth in more detail below.

14 **Encumbrances Against the San Jose Property**

15 The San Jose Property is encumbered by following liens and judgments: (1) a
16 first deed of trust in favor of Mr. Cooper in the approximate outstanding sum of
17 \$1,834,145.19 (See, **Exhibit “C”** to Hjelmeset Declaration); (2) second deed of trust in
18 favor of RTR in the approximate sum of \$437,546.09 (See, **Exhibit “D”** to Hjelmeset
19 Declaration); and (3) judgment in favor of JP Morgan Chase Bank in the amount of
20 \$1,611.51 (the “Judgment”) (See, **Exhibit “E”** to the Hjelmeset Declaration).

21 **Consent of First Deed of Trust Holder, Mr. Cooper**

22 Pursuant to 11 U.S.C. Section 363(f)(2), on June 28, 2019, Mr. Cooper,
23 consented to the short sale of the San Jose Property to the Buyers for the sum of
24 \$1,755,000 (the “Sale Proceeds”). From the Sale Proceeds, Mr. Cooper has authorized
25 a payment of \$28,000, in full satisfaction of RTR’s second deed of trust against the San
26 Jose Property. In addition, from the Sale Proceeds Mr. Cooper has also agreed to pay
27 the sales Commission, a \$100,000 carve out payment of the estate, an \$850 payment to
28 the estate for the Trustee’s liability insurance, the outstanding and unpaid real property

1 taxes, all reasonable and necessary closing costs, and a negotiated payout on the
2 Judgment, directly from escrow. A condition of the sale is that the sale must close on or
3 before August 16, 2019, and the San Jose Property must be delivered vacant to the
4 Buyers. All net proceeds remaining after payment of the liens and expenses set forth
5 above, shall be remitted to Mr. Cooper in full satisfaction of Mr. Cooper's first deed of
6 trust. (See, **Exhibit "C"** to the Hjelmeset Declaration).

7 **Consent of Second Deed of Trust Holder, RTR**

8 RTR holds a second deed of trust against the San Jose Property. RTR has
9 agreed to accept a negotiated payment of \$28,000, in full and final settlement and
10 release of its entire second position deed of trust. The \$28,000, negotiated payment
11 shall be paid to RTR upon consummation of the sale of the property, directly from
12 escrow, from the Sale Proceeds of the San Jose Property. The Trustee is selling the
13 San Jose Property free and clear of RTR's second deed of trust pursuant to 11 U.S.C.
14 Section 363(f)(2), as RTR has consented to the sale of the property in exchange for a
15 payment of \$28,000. (See, **Exhibit "F"** to the Hjelmeset Declaration).

16 **Sale Free and Clear of JPMorgan Chase Bank Judgment Lien**

17 JPMorgan Chase Bank procured the Judgment against the Debtor's husband,
18 Biamba John in the amount of \$898.45, which abstract of Judgment was recorded
19 against the San Jose Property on October 10, 2011, in the official records of the Santa
20 Clara County Recorder's office as instrument number 21356568. (See, **Exhibit "A"** to
21 the Hjelmeset Declaration). The Judgment is junior in priority to the first deed of trust of
22 Mr. Cooper and the second deed of trust of RTR. The current outstanding balance
23 owed in the Judgment is \$1,611.51.

24 JPMorgan Chase Bank has agreed to accept a discounted payoff of \$1,000.00 in
25 full satisfaction of its Judgment. (See, **Exhibit "G"** to the Hjelmeset Declaration).

26 **Carve Out Payment to the Bankruptcy Estate**

27 The Trustee and Mr. Cooper have agreed that the bankruptcy estate shall receive
28 a "carve out" payment of \$100,000, from the Sale Proceeds of the San Jose Property,

1 free and clear of any and all security interests and liens of record against the San Jose
2 Property (the "Carve Out Payment"). The estate is receiving the Carve Out Payment in
3 exchange for: (1) the Trustee's efforts in marketing the San Jose Property; (2) securing
4 qualified offers for the property; (3) sheparding the property through the Bankruptcy
5 Court approval process; and (4) delivering the San Jose Property vacant to the Buyers.
6 The Carve Out Payment to the estate is subject to Bankruptcy Court approval and shall
7 be paid to the Trustee, directly from escrow, upon consummation of the sale. (See,
8 **Exhibit "C"** to the Hjelmeset Declaration).

9 **Compensation of Real Estate Brokers and BK Global**

10 The Commission, in the amount of \$105,300, shall be paid upon consummation
11 of the sale, from the Sale Proceeds, directly from escrow, as follows: (1) \$35,100,
12 representing 2% of the sale price of the San Jose Property, to BK Global; (2) \$35,100,
13 representing 2% of the sale price of the San Jose Property, to Buchanan; and (3)
14 \$35,100, representing 2% of the sale price of the San Jose Property, to Buyers' broker.

15 **Sale of San Jose Property**

16 During the pendency of the Debtor's Chapter 13 case, the San Jose Property was
17 listed for sale by the Debtor, who received no purchase offers. After conversion to
18 Chapter 7, the Trustee listed the San Jose Property for sale for the sum of \$1,649,950.
19 In April, 2019, the Trustee received seven (7) offers for the San Jose Property, ranging
20 from \$1,615,000 to \$1,755,000. The Buyers' offer was the highest offer received by the
21 Trustee. (See, Hjelmeset Declaration). All offers received for the San Jose Property
22 were "short sale" offers, and were forwarded to Mr. Cooper for review. The Trustee
23 accepted the Buyers' offer, subject to: (1) Mr. Cooper's approval; (2) acceptance of the
24 negotiated \$28,000, short payoff to RTR; (3) the estate's receipt of the Carve Out
25 Payment; and (4) Bankruptcy Court approval. A true and correct copy of the Buyers'
26 offer is attached as **Exhibit "H"** to the Hjelmeset Declaration).

27 The Trustee is informed and believes that the Buyers have no connection with the
28 Debtor and are not insiders of the Debtor, as that term is defined in 11 U.S.C. Section

1 101(4). The Trustee believes that the Buyers are good faith purchasers as that term is
2 defined in 11 U.S.C. Section 363(m). See, Hjelmeset Declaration.

3 **Payments Directly from Escrow**

4 From the Sale Proceeds of the San Jose Property the Trustee intends to pay the
5 following encumbrances and costs directly from escrow: (1) RTR the sum of \$28,000 in
6 full satisfaction and release of RTR's lien; (2) JPMorgan Chase Bank Judgment in the
7 sum of \$1,000; (3) Commissions in the amount of \$105,300 representing six percent
8 (6%) of the sale price of the property; (4) \$100,000 Carve Out Payment to the
9 bankruptcy estate, free and clear of all liens; (5) \$850 payment to the bankruptcy estate
10 for the Trustee's liability insurance; (6) outstanding and unpaid real property taxes; (7) all
11 normal and ordinary costs of sale, including but not limited to escrow fees, and recording
12 fees; and (8) all remaining net sales proceeds to Mr. Cooper, in an amount not less than
13 \$1,506,305.06.

14 This is a true short sale as the carve-out for the estate and other costs of sale will
15 essentially be from funds that would otherwise go to Mr. Cooper, the first deed of trust
16 holder on the San Jose Property, based on the large debt it is owed. (A true and correct
17 copy of the HUD-1 Estimated Settlement Statement, reflecting the charges to be paid
18 from escrow, is attached as **Exhibit "I"** to the Hjelmeset Declaration).

19 The Buyers are purchasing the San Jose Property "as is" and "where is" without
20 warranties of any kind by the Trustee or his professionals. The sale of the San Jose
21 Property is free and clear of all liens and encumbrances, claims, and interests, pursuant
22 to 11 U.S.C. Section 363(b) and (f). Out of an excess of caution, any liens and interests
23 against the San Jose Property that are not paid/resolved through escrow, shall attach to
24 the estate's carve-out amount of \$100,000, with the same force, effect, validity, and
25 priority as such liens or interests had with respect to the San Jose Property prior to the
26 sale.

27 **Trustee's Business Judgment**

28 It is the Trustee's business judgment that the sale of the San Jose Property to the

1 Buyers, on the terms and conditions set forth above, is in the best interests of the estate
2 and its creditors. The scheduled value of the San Jose Property was \$1,800,000. The
3 property was listed for sale at \$1,649,950. The Buyers' offer in the amount of
4 \$1,755,000, was the highest and best offer of the seven offers received by the Trustee
5 after the San Jose Property had been exposed to the market for a period of six months.
6 The Trustee believes that the price offered by the Buyers, exceeds that which would be
7 realized through any other disposition of the property, such as a public auction. In
8 addition, because the estate has been able to negotiate a "short sale" with Mr. Cooper
9 and a negotiated short payoff to RTR, and a discounted payout on the JPMorgan Chase
10 Judgment, the estate will receive a \$100,000 Carve Out Payment, despite the fact that
11 the San Jose Property is under water. See, Hjelmeset Declaration.

12 The San Jose Property was the Debtor's primary residence on the date of
13 commencement of the bankruptcy case. Accordingly, due to the favorable tax treatment
14 afforded to taxpayers involving the sale of principal residences under the Internal
15 Revenue Code, the Trustee anticipates that there will be no tax liability generated from
16 the short sale of the San Jose Property. (See Hjelmeset Declaration).

17 The proposed sale has been brought in good faith and has been negotiated on an
18 "arms length" basis. The negotiations with the Buyers have resulted in a offer to sell the
19 estate's interest in the San Jose Property that will have substantial benefit for creditors.
20 (See Hjelmeset Declaration). Accordingly, the sale is in good faith and should be
21 approved. The Trustee seeks such a finding pursuant to 11 U.S.C. Section 363(m).

22 The Trustee further requests a waiver of the fourteen (14) day stay of the order
23 approving the sale of the San Jose Property under Federal Rule of Bankruptcy
24 Procedure 6004(h) to allow the sale of the San Jose Property to close as soon as
25 possible after entry of the Court order approving the sale of the property.

26 **II. GROUNDS FOR APPROVAL OF SALE**

27 **A. Sale of the San Jose Property is the Best Interest of the Estate**

28 Courts will ordinarily approve a proposed sale of estate property if there is good

1 business reason for the sale and the sale is in the best interests of the estate. In re
2 Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bkrtcy.C.D.Cal. 1991), In re Lionel
3 Corp., 722 F.2d. 1063, 1069 (2nd Cir. 1983).

4 Despite there being no equity in the San Jose Property because of the over-
5 encumbrances, the proposed sale will generate unencumbered funds for the estate in
6 the amount of \$100,000. If this sale is approved \$100,000 will be generated for the
7 benefit of the estate's unsecured creditors.

8 The sale of the San Jose Property is based on good business reason and in the
9 best interest of the estate. If the sale is not approved, the estate will loose all potential
10 benefit from the San Jose Property, as there is no available equity in the property
11 without the short sale and accompanying beneficial carve-out for the estate.

12 **B. The Sale is Made in Good Faith**

13 A purchaser of property is protected from the effects of reversal on appeal of the
14 authorization to sell or lease as long as the Court finds that the purchaser acted in good
15 faith and the appellant fails to obtain a stay of the sale. 11 U.S.C. Section 363(m).

16 Here, the proposed Buyers were procured solely as a result of traditional
17 marketing efforts. The Trustee further submits that negotiations with the Buyers were
18 made in an arms-length fashion. The Trustee has no relationship with the Buyers other
19 than as buyer/seller and there was no self-dealing associated with the sale. (See
20 HJELMESET Declaration).

21 Accordingly, the Trustee requests a finding that the Buyers are good faith
22 purchasers of the San Jose Property, within the meaning of Section 363(m).

23 **C. The Proposed Sale Should be Allowed Free and Clear of Liens**

24 Bankruptcy Code Section 363(f) allows a trustee to sell property of the bankruptcy
25 estate "free and clear of any interest in such property of an entity," if any of the following
26 five conditions are met:

- 27 (1) applicable non-bankruptcy law permits a sale of such property
28 free and clear of such interest;
- (2) such entity consents;

1 [...] (5) such entity could be compelled, in a legal or equitable proceeding,
2 to accept money satisfaction of such interest. 11 U.S.C. Section 363(f)

3 Section 363(f) is written in the disjunctive. Thus, only one of the enumerated
4 conditions needs to be satisfied for Court approval to be appropriate.

5 **1. Mr. Cooper has Consented**

6 Mr. Cooper, the first deed of trust holder on the San Jose Property has consented
7 to the short sale of the property. See **Exhibit "C"** to the Hjelmset Declaration.

8 **2. RTR has Consented**

9 RTR, the second deed of trust holder on the San Jose Property has consented to
10 the short sale of the property and has agreed to accept a discounted payoff of \$28,000
11 in full satisfaction of its second position deed of trust. See **Exhibit "F"** to the Hjelmset
12 Declaration.

13 **3. JPMorgan Chase Bank has Consented**

14 JPMorgan Chase Bank, holder of the third position Judgment lien recorded
15 against the San Jose Property has consented to short sale of the property and has
16 agreed to accept a discounted payoff of \$1,000 in full satisfaction of its Judgment.

17 **4. Junior Liens can be Wiped Out**

18 The Trustee is unaware of any other junior liens (except those specifically
19 addressed above), against the San Jose Property. (See **Exhibits "A" and "B"** to the
20 Hjelmset Declaration). Notwithstanding, with respect to junior liens, the Trustee
21 proposes to sell the San Jose Property under Section 363(f)(1) and (5) as permitted in
22 California judicial and non-judicial foreclosures. California judicial and non-judicial
23 foreclosure sales can be used to wipe out junior liens. See 11 U.S.C. Section 363(f)(1)
24 (stating that a trustee may sell property of the estate free and clear of liens or other
25 interests when applicable non-bankruptcy law permits such a sale free and clear of liens
26 and interests). The BAP in Clear Channel stated that an example of a section 363(f)
27 sale is the Uniform Commercial Code section 9-320, which permits a sale free and clear
28 of a consensual security interest, if the collateral is sold in the ordinary course of

1 business of the debtor. (See, Clear Channel Outdoor, Inc. v. Knupfer, 391 B.R. 25, 41
2 (9th Cir. BAP 2008), fn. 21; Cal.Civ.Code Section 2924 et seq.) Similarly, bankruptcy
3 courts have stated that the availability of foreclosure sales outside of bankruptcy
4 represent a “legal or equitable proceeding”, thus allowing a bankruptcy trustee to sell the
5 subject property free and clear of liens under Section 363(f)(5). (See In re Jolan, Inc.,
6 403 B.R. 866, 869-870 (Bkrcty.W.D.Wash. 2009); In re Boston Generating, LLC., 440
7 B.R. 302, 333 (Bkrcty.S.D.N.Y. 2010)).

8 In this case, if the first deed of trust holder BofA elected to foreclose on its
9 interest in the San Jose Property outside of bankruptcy, every junior interest in the
10 property would be extinguished notwithstanding the fact that the foreclosure sale price
11 may or may not pay such extinguished interests in full, or not at all. In such a
12 foreclosure proceeding, any junior liens would be forced to accept the distribution
13 allowed by the resulting foreclosure sale price, in full satisfaction of its released lien.
14 This hypothetical foreclosure sale situation clearly meets each element of Section
15 363(f)(5) to authorize the sale of the San Jose Property free and clear of all interests, as
16 it clearly demonstrates that a junior interest “could be compelled, in a legal or equitable
17 proceeding [i.e., a foreclosure sale], to accept money satisfaction [i.e., the distribution
18 allowed pursuant to the foreclosure sale price] of such interest.” 11 U.S.C. Section
19 363(f)(5).

20 Accordingly, the Court has the authority to approve the sale of the San Jose
21 Property free and clear of any junior liens under Sections 363(f)(1) and (5).

22 **D. The Court has the Authority to Waive the Fourteen-Day Stay of Sale**

23 Federal Rule of Bankruptcy Procedure 6004(h) provides that “[a]n order
24 authorizing the use, sale or lease of property other than cash collateral is stayed until the
25 expiration of 14 days after entry of the order, unless the Court orders otherwise.” FRBP
26 6004(h). Mr. Cooper, the first deed of trust holder, has consented to the short sale of
27 the San Jose Property provided escrow closes on or before August 16, 2019 (See
28 **Exhibits “C”** to the Hjelmset Declaration). Consequently, the Trustee seeks to close

1 the sale of the San Jose Property as soon as practicable after entry of an order
2 approving the sale. The Trustee requests that the Court exercise its discretion under
3 FRBP 6004(h) and waive the fourteen-day stay requirement.

4 5 **III. CONCLUSION**

6 **WHEREFORE**, based on the foregoing, the Trustee respectfully submits that
7 good cause exists for granting the sale motion and requests that the Court enter an
8 order as follows:

9 1. The entire San Jose Property is property of the bankruptcy estate
10 and the Trustee is authorized to sell the San Jose Property on an “as is”, “where
11 is” basis, without any warranties or representations, to the Buyers, for the total sum of
12 \$1,755,000. All other monetary obligations of the Trustee on behalf of the estate, as the
13 seller of the San Jose Property, that would normally be paid at the close of escrow, such
14 as real property taxes, brokerage commissions, escrow fees, transfer taxes, closing
15 costs and other costs of sale shall be paid through escrow from the sale proceeds at the
16 close of escrow, without requiring the estate to place any funds into escrow or have any
17 continuing obligation to the secured parties pursuant to the terms and conditions set
18 forth in sale agreement, attached as **Exhibit “H”** to the Hjelmset Declaration.

19 2. Sale of the San Jose Property free and clear of all liens, claims, interests,
20 and encumbrances is approved, subject only to the consent of the first deed of trust
21 holder, Mr. Cooper, the second deed of trust holder, RTR.

22 3. Authorizing the payment of liens, carve out to the bankruptcy estate, costs
23 of sale and other expenses directly from the sale proceeds upon close of escrow,
24 including but not limited to:

25 A. Payment of outstanding real property taxes, if any;

26 B. Payment of 6% real estate commissions \$105,300, shall be paid
27 upon consummation of the sale, from the Sale Proceeds, directly
28 from escrow, as follows: (1) \$35,100, representing 2% of the sale

1 price of the San Jose Property, to BK Global; (2) \$35,100,
2 representing 2% of the sale price of the San Jose Property, to
3 Buchanan; and (3) \$35,100, representing 2% of the sale price of the
4 San Jose Property, to Buyers' broker;

5 C. Carve Out payment to the bankruptcy estate of \$100,000, plus \$850
6 for the Trustee's liability insurance based on first deed of trust
7 holder, Mr. Cooper's consent to the sale, or under Bankruptcy Code
8 Section 506© as a surcharge against the collateral of Mr. Cooper for
9 the costs the estate has incurred in the maintenance of its collateral
10 (consisting of the San Jose Property), as well as the preservation
11 and disposition of its collateral;;

12 D. Discounted payoff of \$28,000 to the junior second deed of trust
13 holder, RTR, in full satisfaction of its deed of trust;

14 E. Discounted payoff of \$1,000 to JPMorgan Chase Bank in full
15 satisfaction of its junior Judgment lien;

16 E. Payment of closing costs and other monetary obligations the sale
17 agreement requires the Trustee on behalf of the estate as seller of
18 the San Jose Property to pay at the close of escrow (including but
19 not limited to escrow charges, title charges, documentary transfer
20 taxes, property transfer taxes), without requiring the estate to place
21 any funds into escrow or have any continuing obligation to the
22 senior lien holder, Mr. Cooper. In connection therewith, provided
23 the estate receives the \$100,000 carve-out at closing, authorizing
24 the Trustee to resolve any disputes over the allowance and
25 disallowance of costs and/or payoff amounts subject only to
26 agreement between Mr. Cooper and the Trustee as part of the
27 escrow closing without the need for further notice, hearing or Court
28 order; and

- 1 G. Payment of the balance of the sale proceeds to the first deed of
2 trust holder, Mr. Cooper.
- 3 4. Approving the carve-out for the estate of \$100,000 free and clear of any
4 liens or interests, to compensate the estate *inter alia* for its efforts in connection with the
5 sale of the San Jose Property.
- 6 5. Authorizing the Trustee to sign any and all documents necessary to
7 consummate the sale of the San Jose Property pursuant to the terms of the sale
8 agreement and the short sale approval letter from Mr. Cooper and RTR, including but
9 not limited to any and all conveyances contemplated by the sale.
- 10 6. A determination by the Court that the Buyers are good faith purchasers
11 with respect to the sale of the San Jose Property pursuant to Bankruptcy Code Section
12 363(m).
- 13 7. Waiving the fourteen-day stay of the order approving the sale of the
14 San Jose Property under FRBP 6004(h), such that the sale of the San Jose Property
15 can close as required by Mr. Cooper in its acceptance of the short sale.
- 16 8. And for such other and further relief as the Court deems just and proper
17 under the circumstances of this case.

18
19 Dated: July 25, 2019

MARSHALL & RAMOS, LLP

20
21 /s/ Mariam S. Marshall

22 Mariam S. Marshall
23 Attorneys for Trustee
24 FRED HJELMESET
25
26
27
28